



## SCOTTISH EXECUTIVE

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### **Circular No CCD 2/2003**

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31 March 2003

NHS Board Chief Executives  
NHS Trust Chief Executives  
Health and Social Work Professional Bodies  
Voluntary Sector Organisations

Dear Colleague

### **COMMUNITY CARE AND HEALTH (SCOTLAND) ACT 2002 NEW STATUTORY RIGHTS FOR CARERS: GUIDANCE**

#### **Introduction**

1. This circular (CCD2/2003) provides guidance to local authorities, the NHS, voluntary sector representatives and other agencies on implementing the provisions to support carers contained in the Community Care and Health (Scotland) Act 2002. This guidance is produced under the powers contained in Section 26 of the Community Care and Health (Scotland) Act 2002.

2. Sections 8 to 12 of the Community Care and Health (Scotland) Act 2002 ("the 2002 Act") came into force on 1 September 2002. They introduce significant new measures to support informal or unpaid carers who provide care for family members, friends or neighbours. Local authorities have the lead responsibility for implementing these measures, as the agency with statutory duties for assessing the needs of carers and the people they care for in the community. With the introduction of Single Shared Assessment (SSA) under the Joint Future agenda, however, health and other professionals are increasingly involved in assessments of service users and carers. This guidance is therefore intended as a tool for all professionals, managers and staff in local authorities, the NHS and other agencies involved in supporting carers. It is also aimed at helping the voluntary sector, carers' organisations and carers to be aware of the new legislative rights and how we have advised statutory agencies to interpret them.

3. Carers affected by the provisions in the 2002 Act may be:

- adults caring for adults;
- young carers caring for adults or another young person;
- carers of disabled children, whether the carer is a parent or not.

4. This guidance has been drafted in discussion with representatives from the voluntary sector, CoSLA/ADSW and the NHS. It was issued on a consultative basis, as draft guidance (CCD10/2002), between 22 November 2002 and 14 February 2003. Comments received have been taken on board, where appropriate. The layout of the final guidance has altered from the earlier consultation version. This was aimed at providing a more user-friendly version for health and social care practitioners. The final guidance seeks to balance user friendliness with ensuring that the policy and legislative context of the new carers' legislation is also set out. Our thanks go to East Renfrewshire Council for their work in providing a basis for the revised version. Our thanks also to the many contributors who took the time to comment on the draft guidance.

### **Policy Context**

5. Carers play a unique role in the overall provision of care in the community. They are usually the main care-providers for the person they look after, and have extensive knowledge and expertise about the needs of the person they care for. Supporting carers is a key priority for the Scottish Executive under its [Strategy for Carers in Scotland](#). The Executive's policy is that carers should be recognised and valued as partners with other care-providers, and supported to enable them to continue caring as much and as long as they wish.

6. Supporting carers is directly linked to the Executive's commitment to social inclusion and equality. Carers play a vital role in our communities, yet as a result of their caring they are often at risk of becoming isolated, or unable to take up opportunities. Supporting and involving carers is also an integral feature of the Executive's wider policy approaches to change the way social care and NHS services are designed and delivered through the Joint Future agenda, free personal and nursing care for older people, Patient and Public Involvement initiatives, the recent Health White Paper "Partnership for Care" and the wider development of Community Planning.

### **Principles of the New Legislation**

7. The introduction of new legislation to allow carers' needs to be met more directly was one of the commitments in the Strategy for Carers in Scotland. The fundamental principle underlying the new provisions is that carers should be recognised and treated as key partners in providing care. The recognition of carers as partners rather than service users should underpin all support given to carers and the people they care for.

8. A second principle underlying the new legislation is that carers, like all providers of care, need adequate resources to enable them to continue giving care. For carers, resources may take the form of other caring services to complement their own support for the cared-for person, or support or advice provided directly to the carer.

## **Main changes made by 2002 Act**

9. The key changes the 2002 Act makes for carers are summarised below:

- substantial and regular adult carers are entitled to an assessment of their ability to care (“carer’s assessment”), independent of any assessment of the person they care for;
- for the first time, young carers under 16 now have the same right to an assessment;
- local authorities have a duty to inform eligible carers of their right to an assessment;
- local authorities have a duty to take account of the care provided by a carer, and the views of the person in need and their carer before deciding what services to provide;
- Scottish Executive Ministers now have the power to require NHS Boards to draw up carer information strategies for informing carers of their rights under the new legislation.

Further details of these changes and advice on implementation is contained in the attached guidance.

### **“Substantial and Regular”**

10. The new provisions in the 2002 Act amend and extend existing provisions in the Social Work (Scotland) Act 1968 and Section 24 of the Children (Scotland) Act 1995. In particular, they build on the existing concept that carers are entitled to an assessment of their ability to care, if they provide or intend to provide “a substantial amount of care on a regular basis”. The terms “substantial” and “regular” are not defined in the legislation, giving local authorities, and other assessors who may be delegated to carry out assessments, the discretion to interpret them to help carers who most need support. The guidance offers advice on this.

### **Young Carers**

11. The legislation introduces a new right to assessment for carers under the age of 16. The Scottish Executive recognises that some children and young people have caring responsibilities, and it is essential that they are identified and properly supported. However, statutory and voluntary agencies should take great care that in supporting young carers, they do not allow them to become trapped in their caring role or “institutionalised” as carers.

12. Children and young people must be protected from inappropriate forms and levels of caring. Close joint working between local authority children’s services, community care services, education services and the NHS, and co-operation with schools and youth workers, are essential for a full understanding of the young person’s needs and in order to provide appropriate support to the young carer and their family.

## **Implications for NHS**

13. The 2002 Act introduces for the first time a statutory role for the NHS in relation to carers. Section 12 of the 2002 Act enables Ministers to require NHS Boards to prepare and submit to the Scottish Executive “Carer Information Strategies” for informing carers of their right to assessment. Separate guidance on these Strategies will issue when Ministers decide to exercise this power.

14. Some NHS Boards have already started work on initiatives of this kind to inform and support carers, in partnership with local carers’ groups and local authorities. The Executive welcomes this approach, and would be happy to comment on or offer advice on any work of this kind that NHS Boards and local partners are already taking forward.

## **Resources**

15. Support for local authority expenditure on supporting carers is provided through the general local government settlement. The settlement for the period 2001-02 to 2003-04 provided local authorities with significant additional resources to help develop support services for carers under the *Strategy for Carers in Scotland*, and to increase the availability of respite care. The new settlement for the period 2003-04 to 2005-06 includes provision to maintain these enhanced services and to continue to develop respite services. The joint working measures contained in the 2002 Act allow local authorities and NHS Boards to develop joint management and budgeting for care services. This should assist local authorities and their partners to develop further the level and co-ordination of support provided to carers, in line with the Joint Future and Carers Strategy agendas.

## **Training**

16. Under the introduction of Single Shared Assessment (SSA) statutory agencies should already be developing a strategic approach to ensure that all staff involved in assessments are appropriately trained, where possible through joint training arrangements. All staff involved in conducting assessments should be trained on issues relating to unpaid carers. Staff should also be trained to meet the requirements of the Race Relations (Amendment) Act 2000, which will be particularly relevant in assessing the needs of carers from minority ethnic groups. The costs of any such training should be met from the significant uplifts being provided by the Executive for the general provision for health and social care.

## **Monitoring**

17. It is essential that local authorities, other statutory agencies, voluntary sector bodies and the Executive can monitor that the new provisions are being implemented effectively and are producing effective outcomes for carers. The guidance sets out how this should be achieved.

## **Action**

18. Local authorities, NHS Boards and Trusts are asked to distribute this guidance to all staff directly involved in supporting carers and the people they care for. NHS Boards are also asked to disseminate this guidance to LHCCs in their area.

## **Enquiries**

19. Any comments or enquiries on the guidance should be addressed to Morag Robertson - Scottish Executive Health Department, Community Care Division 2, 2<sup>nd</sup> Floor East Rear, St Andrew's House, Edinburgh, EH1 3DG (telephone: 0131 244 5389 or e-mail [morag.robertson@scotland.gsi.gov.uk](mailto:morag.robertson@scotland.gsi.gov.uk)). This circular is also available from [www.show.scot.nhs.uk/sehd/ccd.asp](http://www.show.scot.nhs.uk/sehd/ccd.asp).

Yours sincerely

*Adam Rennie*

J A RENNIE

**COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002  
GUIDANCE ON SECTIONS 8-12: CARERS**

***Note:** This version of the guidance (with “May 03” at the foot of each page) replaces the version placed on the Scottish Executive website on 31 March 2003. It is identical in content, apart from a very small number of corrections and clarifying changes, and improvements to the internal navigation within the guidance.*

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## 1. INTRODUCTION

### 1.1 What is the guidance for?

1.1.1 This document gives local authorities, NHS bodies and the voluntary sector guidance on effective implementation of the provisions affecting unpaid or informal carers contained in Part 1 (Sections 8 to 12) of the Community Care and Health (Scotland) Act 2002 (“the 2002 Act”). These sections of the 2002 Act came into force from 1 September 2002. The full text of the 2002 Act can be found at:

[www.hmso.gov.uk/legislation/scotland/acts2002/20020005.htm](http://www.hmso.gov.uk/legislation/scotland/acts2002/20020005.htm)

1.1.2 This guidance has been produced following extensive consultation with representatives from local authorities, NHS Boards and Trusts, and voluntary sector organisations. This final version of the guidance replaces the draft guidance which was issued for consultation under Scottish Executive Circular CCD 10/2002 (22 November 2002).

### 1.2 Who is the guidance for?

1.2.1 This guidance is designed as a tool for professionals and managers in local authorities, NHS and other statutory agencies involved in supporting carers. Carers may be:

- adults caring for adults;
- young carers caring for adults or another young person;
- carers of children with disabilities, whether the carer is a parent or not.

1.2.2 The guidance will also help carers, carers’ organisations and other voluntary sector organisations understand the new legislative rights for carers, and how we have advised statutory agencies to implement them.

**1.2.3 Statutory agencies should distribute this guidance widely to all staff directly involved with carers and the people they care for.** Further copies of the guidance are available from the Scottish Health on the Web website [www.show.scot.nhs.uk/sehd/ccd.asp](http://www.show.scot.nhs.uk/sehd/ccd.asp)

### 1.3 Format of this Guidance

1.3.1 The format of this guidance is different in some sections from the draft version issued for consultation under Circular CCD 10/2002. Guidance specifically directed at statutory agencies is now presented in a more concise format through bullet points, in order to make it clearer and more user-friendly for practitioners. This change in format has been made in response to comments made during the consultation on the draft guidance. The content remains largely the same as in the draft version, subject to some changes made as a result of the consultation exercise.

### 1.4 Links with other Guidance

1.4.1 This guidance offers advice on the *policy* issues raised by the provisions in Sections 8-12 of the 2002 Act. It replaces the guidance (pages 3-9) issued in [Scottish Office Circular SWSG 11/96](#), implementing the Carers (Recognition and Services) Act 1995.

1.4.2 Complementary advice on *good practice* issues in supporting carers will be issued later. This *good practice* guidance will replace the remainder of SWSG 11/96 once it is available.

## **2. POLICY CONTEXT**

### **2.1 Strategy for Carers in Scotland**

2.1.1 Supporting carers is a key priority for the Scottish Executive under its [Strategy for Carers in Scotland](#), published in November 1999. The introduction of new provisions to support carers in Sections 8 to 12 of the 2002 Act fulfils a commitment in the Strategy to introduce new legislation to allow carers' needs to be met more directly.

### **2.2 Links with Other Policies**

2.2.1 Supporting carers and involving them in the partnership of care is not a new or separate element of the Scottish Executive's social care and health agenda. Caring for carers is an integral part of wider policy approaches which are shaping the way that social care and health services are being delivered. Other key policies which support carers include:

- joint-working between statutory agencies and the voluntary and private sectors under the Joint Future agenda
- Single Shared Assessment
- National Care Standards
- NHS patient & public involvement initiatives
- new mental health legislation
- free personal and nursing care
- "The Same As You" review of services for people with learning disabilities
- improved access to independent advocacy
- integrated children's services
- development of new model hospital discharge protocols
- development of home care services
- direct payments for parents of children with disabilities (from June 2003)
- Adults with Incapacity (Scotland) Act 2000
- Beattie Committee Report

### **2.3 Equality and Social Inclusion**

2.3.1 Supporting carers is linked directly to the Executive's wider commitment to social inclusion and equality. The Executive is committed to developing a fairer society in which equal opportunities are available to everyone in our communities. Caring is often an isolated - and isolating - activity that can limit the carer's own opportunities and development. Carers can find themselves excluded from a range of activities and opportunities because of their time and personal commitment to their caring role.

2.3.2 Local authorities and other statutory agencies should work in **partnership** with carers. Support for carers should be designed to empower carers to make the most of their own potential and opportunities, rather than allowing them to be confined or isolated in their caring role. Statutory agencies should also ensure that services that support carers and the people they care for are universally accessible and not affected such as by issues of race, sexuality or culture. These principles are at the heart of the Executive's policies on supporting carers and underpin this guidance.

2.3.3 Statutory agencies must ensure that in providing services to support carers and the people they care for they take full account of their obligations under the Race Relations (Amendment) Act 2000, which gives public bodies a statutory duty to promote race equality. Key bodies, including local authorities and NHS Boards, are also subject to specific duties to monitor existing policies and services to ensure they promote race equality, and to assess and consult on the likely impact on the promotion of race equality of proposed policies and services.

## **2.4 The NHS and carers**

2.4.1 The NHS has a vital role to play in identifying and supporting carers. The Scottish Executive White Paper "[Partnership for Care](#)" (February 2003) stresses that staff throughout the NHS should work closely with carers as key partners in the provision of care. The 2002 Act also introduces a new power for Scottish Ministers to require NHS Boards to develop carer information strategies to inform carers of their eligibility for assessment as a carer ([See Chapter 10](#)). Through the implementation of Single Shared Assessment NHS staff will become increasingly involved in assessments of carers and the people they care for, and this guidance recognises this growing role of the NHS in supporting carers.

## **2.5 Partnership with the Independent Sector**

2.5.1 The Executive values the expertise and commitment of the voluntary and private sectors, and is committed to working closely with them to deliver the highest quality, appropriate services. Statutory agencies should work in partnership with the voluntary and private sectors to harness their expertise and capacity, and to deliver services most effectively and efficiently. Authorities should share information with the independent sector as far as possible. This is especially relevant for voluntary sector organisations, which play a significant role in delivering community care services and supporting carers.

## **2.6 Joint Future Agenda and joint-working**

2.6.1 As the Joint Future Agenda develops, services are increasingly being delivered in more flexible ways, through co-operation and partnership between local authorities, the NHS, the voluntary and private sectors. This trend will directly influence the way carers and the people they care for are supported, particularly the introduction of Single Shared Assessment arrangements. When describing the practical effect and implementation of the 2002 Act, whose duties fall mainly on local authorities, this guidance predominantly uses the term "local authorities" in describing how carers should be treated and assessed. In practice other bodies, particularly the NHS, may be involved in delivering assessments, services or other functions under local delegation and joint-working agreements. In these circumstances the guidance will also apply to those bodies.

### 3. KEY PRINCIPLES

#### 3.1 Carers as Key Partners

3.1.1 The fundamental principle underlying the new legislative provisions is that local authorities, the NHS and other support agencies should recognise and treat carers as **key partners in providing care**. Carers are “key” partners because they are different from other partners in the care-giving system in their status and their contribution. Carers are usually the main care-providers for the person they look after, but unlike other care-providers, they are not paid to provide that care. Carers generally have a close personal relationship with and commitment to the person they care for. For all these reasons carers play a unique role in the overall provision of care to the person they care for, and in care in the community as a whole.

#### **Statutory agencies and those supporting carers should -**

- recognise and treat carers as key partners in providing care.
- recognise and draw on the knowledge and expertise carers have about the person they care for, to ensure that the cared-for person receives services that are right for their needs.

#### 3.2 Resourcing Carers

3.2.1 The Executive’s policy is that carers should be supported to allow them to continue to care as much and as long as they wish and feel able. The 2002 Act does not provide for *services* to carers. Carers, like other service providers, need resources to carry out their function. For carers, these resources may be in the form of other care services to help support the cared-for person, or support or advice provided directly to the carer.

3.2.2 Statutory agencies should view supporting carers as providing resources to enable the carer to sustain their contribution to the care package, rather than treating carers as people with additional needs of their own (except where carers have needs that are not directly related to their caring role).

#### **Statutory agencies and those supporting carers should -**

- support carers to allow them continue to care as much and as long as they wish and are able.
- view supporting carers as providing resources to enable the carer to sustain their contribution to the care package.
- be flexible and imaginative in the ways they support carers.

### **3.3 Outcomes for carers**

3.3.1 Much of this guidance concentrates on the process of carers' assessments, as amended by the 2002 Act. However, the Executive's policy on supporting carers is not solely focused on assessment. The Executive's policy is to recognise and support carers, in order to achieve good outcomes for carers. Good outcomes for carers will occur when:

- the carer is able to cope better with their caring role;
- the carer gets a regular break from caring;
- the carer is better informed and more knowledgeable about their caring role and the needs of the person they care for
- the carer feels valued, supported and listened to.

### **3.4 "Ability to Care"**

3.4.1 The 2002 Act builds on the concept used in existing legislation of assessing carers to establish their "ability to provide or to continue to provide care" for another person. This term is established in Section 12AA of the Social Work (Scotland) Act 1968 ("the 1968 Act") and Section 24 of the Children (Scotland) Act 1995 ("the 1995 Act"). The expression makes clear that an assessment of a carer is not about identifying the carer's own needs, but about establishing whether the carer is able to sustain their caring role. The term "ability to care" in this context should not be interpreted to imply a negative view of the carer's competence or skills.

### **3.5 "Substantial and Regular"**

3.5.1 The 2002 Act builds on the existing concept in the 1968 Act and the 1995 Act, which establishes that carers who provide "a substantial amount of care on a regular basis" are entitled to an assessment. The 2002 Act does not change these terms. As the terms "regular" and "substantial" are not defined in legislation, it is for local authorities to interpret them in relation to individual cases. This approach allows local authorities, in partnership with other agencies, to reach appropriate individual decisions about whether a carer's particular circumstances make them eligible for an assessment.

3.5.2 Authorities should make public their approach in interpreting "substantial and regular", in consultation with local carers' representatives. Authorities should consider the merits of developing consistent approaches to interpreting "substantial and regular" in discussion with other authorities and carer organisations.

**In interpreting “substantial and regular”  
local authorities should -**

- focus on the impact of the caring role on the individual carer and their family
- address the following questions:
  - is the caring role sustainable without additional support?
  - how great is the risk of the caring role becoming unsustainable without additional support?
- take into account a range of factors, including:
  - the total time spent caring
  - type of caring tasks
  - intensity and pattern of caring
  - cultural background of caring situation
  - distances travelled to and from caring situation
  - number of people being cared for
  - nature of the cared-for person’s needs and their likely duration
  - employment status of carer
  - whether other family members including children are affected by the caring situation
  - age of the carer
  - carer’s physical and mental health
  - the history of the caring relationship
  - the carer’s views
- always take a wide view of the extent and nature of the carer's role as a whole.
- take account of situations where the caring role is sporadic and difficult to forecast.
- recognise that the carer's role may fluctuate, particularly where the cared-for person has mental health difficulties that recur periodically.
- recognise that carers from minority ethnic groups may have different caring patterns, and may be caring in more than one location.
- recognise that the needs of the cared-for person may be unpredictable, particularly where they have drug or alcohol problems.
- recognise that carers may also need to combine caring responsibilities with other family responsibilities or activities, including parenting, employment, or education.
- always ensure carers are aware of how the decision on "substantial and regular" has been reached.

### 3.5.3 Caring at a distance

- **In interpreting "substantial and regular" local authorities should -**
- think carefully about the interpretation of “substantial and regular” in the context of carers who -
  - travel significant distances to carry out their caring role, especially where a carer looks after more than one person,
  - are caring for someone who uses or could use services in a different local authority area from the carers’ own area.
- work in partnership with the other authorities affected.
- develop local agreements for handling such cases (usually the authority where the cared-for person lives should take the lead in assessing the carer).

### 3.5.4 Young carers

#### **In interpreting "substantial and regular" local authorities should -**

- not adopt the same approach in interpreting “substantial and regular” for young carers that they would use for an adult carer in a similar role.
- take account of the impact of the young person’s caring responsibilities on their current and future development, as well as their ability to access social, leisure and educational activities.
- take account of the age of the young person and the nature of the caring responsibilities.
- ensure that a child or young person does not have a level of caring responsibility that may undermine their ability to participate in education, leisure and social activities.
- ensure that the cared-for person is receiving sufficient other support so that the young person is not undertaking an inappropriate caring role that might amount to “substantial and regular”.

### 3.5.5 Older carers

#### **In interpreting "substantial and regular" local authorities should -**

- recognise that caring is likely to demand more of an older carer.
- ensure they focus on the impact of the caring role on the individual.

### 3.5.6 Preventive approach.

In many instances, ensuring a carer has early access to advice and practical help will reduce the subsequent need for increased levels of support, and may prevent a future breakdown in the caring relationship.

**In interpreting "substantial and regular" local authorities should -**

- recognise the value of early intervention to sustain carers.

## **4. CHANGES UNDER THE 2002 ACT**

### **4.1 What the 2002 Act Does**

4.1.1 Sections 8 to 11 of the 2002 Act extend the existing statutory obligations on local authorities to support carers. Section 12 of the 2002 Act provides powers for Ministers to require the NHS to develop strategies for informing carers of their entitlement to assessment.

4.1.2 Much of what the 2002 Act provides for is already good practice among some local authorities and their partners. Giving best practice a statutory foundation is intended to help spread it to all local authorities so that carers across Scotland are supported in the most effective way, and to the highest standard.

4.1.3 The key changes for carers made by the 2002 Act are:

- “substantial and regular” adult carers are entitled to an assessment of their ability to care (“carer’s assessment”), independent of any assessment of the person they care for;
- young carers under 16 to have the same rights to assessment;
- local authorities are to ensure carers are made aware of this right;
- local authorities are required to take account of the contribution of carers, and the views of the person in need and their carer, before deciding on services to provide to a cared-for person;
- NHS Boards may be required by Scottish Ministers to develop carer information strategies to inform carers of their entitlement to assessment.

### **4.2 Relationship To Existing Legislation**

4.2.1 Local authorities already have duties to help and support carers under the 1968 Act (as amended by the Carers (Recognition and Services) Act 1995). The new provisions in the 2002 Act build on and enhance these duties, by making further amendments to the 1968 Act. A revised version of Sections 12A, 12AA & 12AB of the 1968 Act is attached at [Annex A](#) to this guidance.

4.2.2 The Children (Scotland) Act 1995 (“the 1995 Act”) gives local authorities duties to promote the welfare of children in need. Section 23 of that Act gives authorities a duty to assess the needs of any child affected by disability (either their own disability, or that of another person in their family). Section 24 of the 1995 Act already gives authorities a duty to assess “substantial and regular” carers of a child with disabilities in order to determine the carer’s ability to continue to provide that care. All of these provisions remain in force and the 2002 Act builds on these duties. [See Chapter 8](#) of this guidance for advice on carers of children with disabilities.

4.2.3 Section 8 of the Disabled Persons (Services, Consultation and Representation) Act 1986 (“the 1986 Act”) requires local authorities to take into account the ability of a carer who provides “a substantial amount of care on a regular basis” to continue providing care, when assessing what services to provide to a person with disabilities living at home. This obligation on local authorities does not apply where the local authority is assessing a carer

under the 1968 or 1995 Acts, as amended by the 2002 Act. In some circumstances however local authorities continue to have obligations under Section 8 of the 1986 Act. In particular, Section 8 of the 1986 Act relates to assessment for services provided under any “welfare enactment”, which includes services under National Assistance and Mental Health legislation. This obligation therefore still applies when authorities assess disabled people for services *other than* community care or children’s services.

## INFORMING CARERS OF THEIR RIGHT TO ASSESSMENT

### 5.1 What the 2002 Act does

5.1.1 Section 9 of the 2002 Act inserts a new Section 12AB in the 1968 Act. This new section requires local authorities to notify carers that they may be entitled to have an assessment of their ability to care. This duty applies to any carer who appears to the authority to be providing - or intending to provide - a substantial amount of care on a regular basis to an adult aged 18 or more who is eligible for community care services.

5.1.2 Section 11 of the 2002 Act creates a similar new Section 24A in the 1995 Act, requiring local authorities to notify carers of children with disabilities that they may be entitled to an assessment. This duty applies to any carer who appears to the local authority to be providing or intending to provide a substantial amount of care on a regular basis to a child with disabilities who is eligible for children's services under the 1995 Act.

### 5.2 Who to inform

5.2.1 Local authorities should ensure that any carer they come into contact with who appears eligible to have a formal assessment of their ability to care is made aware of their potential right to such an assessment. It is most likely to be social work staff who have these contacts, but contacts made by any local authority staff in other functions should also be included wherever possible.

5.2.2 Local authorities should also ensure that all carers have access to general information, not only carers who seem to be eligible for assessment because they are "substantial and regular". Authorities may use their existing power under Section 12 of the 1968 Act to promote social welfare by making advice and guidance available.

#### **local authorities should -**

- inform any carer who appears to be providing a substantial amount of care on a regular basis that they may be entitled to an assessment of their ability to care.
- make arrangements to ensure that all eligible carers they know of are aware of their entitlement to an assessment.
- satisfy themselves that their approach to doing this meets the requirements of the legislation.
- offer information on the assessment process and on the appropriate complaints procedures should the carer wish to complain about the assessment or its outcomes
- offer carers information about other support and help available to them, including any local carers' centre or carers' support groups, and advice on issues such as benefits, Independent Living Fund, and other services.

- ensure that all carers have access to this kind of general information, not only carers who seem to be eligible for assessment because they are providing “substantial and regular” care.
- make information available in formats that are accessible (including tapes, video) and appropriate (especially for young and older carers, carers with learning disabilities and carers from minority ethnic groups).
- provide access to translation and interpreting services where necessary.

### **5.3 How to inform**

5.3.1 The 2002 Act also provides for NHS Boards to develop their own carer information strategies ([see Chapter 10](#)). It will make sense for local authorities and NHS bodies to work together to develop joint approaches to providing information to ensure the most efficient use of resources and to minimise duplication.

#### **local authorities should -**

- have clear arrangements for ensuring that in all future contacts with carers, or people who are looked after by a carer, eligible carers are given the necessary information.
- ensure that systems and protocols for assessing people in need explicitly identify the requirement to notify eligible carers of their right to assessment.
- work in partnership with other agencies and sectors to ensure targeted and consistent information is provided to carers.

## 6. ASSESSMENT OF CARERS

### 6.1 Guidance for Practitioners

6.1.1 This guidance covers the principles and policy underpinning carers' assessments. More detailed guidance on good practice in carrying out carers' assessments will be issued later ([see paragraph 1.4.2](#)).

### 6.2 What the 2002 Act does

6.2.1 Section 9 of the 2002 Act inserts a new Section 12AA in the 1968 Act. This new section gives a "substantial and regular" carer, irrespective of their age, the right to request at any time an assessment of their ability to care and continue to care for another person aged eighteen or over, regardless of whether the cared-for person is being or has been assessed.

6.2.2 Section 11 of the 2002 Act makes a similar change for carers of children with disabilities by amending subsection (1) of Section 24 of the 1995 Act ([see Chapter 8](#)).

### 6.3 Right of Carers to Assessment

6.3.1 A carer who meets the following conditions now has a right to an assessment of their ability to care at any time if:

- they provide or intend to provide a *substantial amount of care on a regular basis* for another person;

*and*

- the person they care for is over 18 and is *eligible for community care services* under the 1968 Act;

*or*

- the person they care for is under 18 and is *eligible for children's services* under the 1995 Act.

#### **Local authorities should -**

- be aware that the 2002 Act removes the need for the carer to be assessed at the same time as the cared-for person
- be aware that the 2002 Act gives carers a right to a separate carers' assessment, even if the cared-for person refuses an assessment or the provision of services.
- be aware that only carers who are providing or intending to provide care on a regular and substantial basis have the legislative right to such an assessment.
- develop clear and consistent approaches to ensure that the interests of both the cared-for person and their carer are considered in a logical and sensitive way.

- ensure front line staff are aware of the distinction between a carers assessment and an assessment of the needs of the cared-for person

#### **6.4 Purpose of Assessment**

##### **local authorities should -**

- be clear that the purpose of a carers' assessment is to:
  - establish what level of care the carer is willing and able to provide, and to determine whether their caring role is sustainable;
  - determine what resources the carer needs to support them in the caring role, and decide how these resources can best be provided;
  - determine what the carer needs to maintain their own health and wellbeing, and decide how these resources can best be provided;
  - identify the care provided by a carer and the carer's views so that they can be taken into account before the local authority decides what package of care to provide to the cared-for person.

#### **6.5 Deciding whether to do an Assessment**

##### **local authorities should -**

- decide whether a carer meets the criteria - i.e., whether the cared-for person is eligible for community care or children's services, and whether the carer's role is "substantial and regular".
- consult other statutory or voluntary bodies if appropriate in reaching this decision.
- decide on the appropriate timing of the assessment .
- approach the cared-for person to see if they wish to be assessed if there is no record of a recent community care or children's assessment of him or her. This must be done sensitively to minimise the potential for friction between the carer and the cared-for person.

#### **6.6 Cared-for Person refuses an Assessment**

##### **If the cared-for person does not want to be assessed local authorities should -**

- seek information from the carer to establish the nature of the caring role and to decide whether they are eligible for a carer's assessment.
- be aware that carers may be in most need of support when a cared-for person declines assessment or other forms of support and ensure that the carer is not overlooked in these circumstances.
- be aware that lack of evidence about the carer's role because the cared-for person is unwilling to be assessed or share information does not affect the local authority's duty to assess an eligible carer.

- be open to the possibility that the relationship between the cared-for person and carer may be abusive in nature, and take appropriate protective action to address this.
- tell the cared-for person that they might be eligible for direct payments instead of services, which may affect their willingness to be assessed.
- consider whether the cared-for person has the legal capacity to make the decision to refuse assessment, and if not consider the implications of the Adults With Incapacity (Scotland) Act 2000 for both the carer and the cared-for person.

## 6.7 Links with other Assessments

### local authorities should -

- recognise that a carer who has support needs in their own right that are not related to their caring role can be assessed as a person in need under the 1968 Act or, if under the age of 18 as a child in need under the 1995 Act.
- decide whether a carer's needs are mainly related to their caring role.
- take into account relevant information gathered under any previous assessment the carer may have had under the 1968 Act, or the 1995 Act, unless the carer does not agree to this.

## 6.8 Different Routes to Assessment

6.8.1 Carers can be assessed through different legislative routes and in a variety of ways. They may be assessed separately, or they may be assessed in conjunction with an assessment of the needs of the person they care for. Authorities should decide on the most appropriate approach in the light of the individual circumstances and the wishes of the carer and the cared-for person.

### local authorities should -

- be aware that carers can be assessed through different legislative routes and in a variety of ways, separately or in conjunction with an assessment of the person they care for.
- decide on the most appropriate approach in the light of the individual circumstances and the wishes of the cared-for person and carer.
- be clear about the assessment approach they are following.
- avoid multiple, separate assessments.
- streamline processes as far as possible in line with Single Shared Assessment principles.
- ensure that the circumstances of the carer are assessed in a holistic way.
- ensure that the carer understands and is content with the assessment process.

## 6.9 Who should assess?

6.9.1 Local authorities have powers under Section 4 of the 1968 Act and Section 19 of the 1995 Act to involve other bodies or persons in helping them to carry out their functions, either voluntary bodies, or any other body, including another local authority. Authorities

should recognise that Single Shared Assessment extends the opportunities to involve a range of staff in assessment, and stresses the principle that the most appropriate professional should be responsible for carrying out an assessment, co-ordinating any other contributions, and identifying the support or resources needed.

**local authorities should -**

- have no preconceptions about which staff should take the lead in carrying out carers' assessments.
- explore the potential for collaboration with other partners in assessing carers under the principles of Single Shared Assessment, including partners from the voluntary sector.
- recognise that many carers are in contact with voluntary sector organisations, and that voluntary bodies can play an important role in the assessment process, or can provide expertise to support statutory sector staff.
- have a clear formal basis underpinning arrangements for involving other parties or bodies in the assessment process.
- reach binding agreements with those other bodies to be certain that assessments meet local authorities' own standards, and that staff involved in assessments have appropriate levels of qualification, training and expertise.
- be aware that local authorities ultimately remain statutorily responsible for the overall performance of the assessment.

## **6.10 Assessment Approach**

6.10.1 Local authorities should adopt the principles of Single Shared Assessment for carer's assessments wherever possible (see [Scottish Executive Circular CCD 8/2001](#)). Single Shared Assessment (SSA) is intended to provide a more holistic, user-friendly and efficient approach to assessing needs through a joined up approach by health, social care and other professionals. In addition to adopting SSA principles, local authorities will also need to decide whether to assess the carer in conjunction with an assessment of the cared-for person, or in a separate assessment. They should decide this on the basis of the individual circumstances, and the wishes of the carer and the cared-for person. In all cases, the carer and cared-for person must be given the opportunity to discuss their needs and views without the other person being present.

**local authorities should -**

- not make assumptions about a carer's willingness or capacity to care.
- offer carers a range of assessment tools to help meet their needs.
- adopt the Single Shared Assessment approach to carer's assessments wherever possible.
- decide whether to assess the cared-for person and carer in a joint exercise, or whether to assess the carer separately, in view of the wishes of the cared-for person and the carer.

- recognise that the wishes and interests of the cared-for person and carer may not always coincide, and involving them at the same time may not allow all the relevant factors to be appreciated.
- ensure that both carers and cared-for persons always have the opportunity to discuss their needs individually without the other person present.
- ensure that assessments are sensitive to cultural, religious and lifestyle differences, and meet the requirements of the Race Relations (Amendment) Act 2000.
- provide access to interpreting, mediation and advocacy support where needed.
- be ready to provide a person of either gender to carry out the assessment.
- be ready to give carers information about the type of services that may be available to help them articulate their needs or identify the kind of support that would help them.
- ensure that the assessment identifies all needs and is not influenced by the available resources.

## 6.11 Self-Assessment

### **local authorities should -**

- offer carers the opportunity to use self-assessment as a part of their assessment process.
- involve carers and local carers groups in the development of any self-assessment tools.

## 6.12 Tensions Between Carer and Cared-for Person

6.12.1 Assessors need to be sensitive to relationships between cared-for persons and carers. Carers often find their caring role stressful and difficult in a range of ways. The cared for person may be finding it difficult to cope with their condition. This may create tensions between the carer and the person they look after. In some caring situations the carer may find it difficult to recognise the need to reduce their caring role, or the carer and the cared-for person may not agree on the way that the care is best provided. Some situations will require skilful counselling and mediation to reconcile the differing interests of the carer and the cared-for person.

### **local authorities should -**

- consider the perspectives of both the cared-for person and the carer.
- work closely with the cared-for person, the carer and other members of the family to seek to resolve situations and provide support where the cared-for person does not want an assessment or re-assessment of their needs, or to accept services suggested by the carer's assessment.
- remember that services cannot be imposed on the cared-for person if they have the capacity to decide to refuse them.

- consider whether the cared-for person has the legal capacity to make the decision to refuse an assessment or services, and if not consider the implications of the Adults With Incapacity (Scotland) Act 2000 for both the carer and the cared-for person.
- provide access to mediation and advocacy services which can play an important role in exploring and resolving tensions between carers and cared-for persons.
- recognise that tension can arise when either the cared-for person's or the carer's ability to communicate is affected by illness, learning, physical or mental disability.
- recognise that tension can arise where either the cared-for person's or carer's first language is not English, and one person interprets for the other.
- provide access to translation and interpreting services where necessary.

### 6.13 Confidentiality

#### **local authorities should -**

- ensure that they protect the confidentiality of information collected from the carer and cared-for person.
- be aware that information gathered from a person during an assessment is likely to be covered by the Data Protection Act 1998, and may only be disclosed to other individuals or agencies in line with data protection principles.
- seek informed consent to sharing of information as part of the assessment process, and formally record where consent is given.

### 6.14 Record of the assessment

#### **local authorities should -**

- inform the carer of the outcome of any assessment that covers the carer.
- give the carer a permanent record of the final assessment in an accessible format.
- offer to discuss or explain it if required.

### 6.15 Information from the assessment

#### **local authorities should -**

- record the overall needs identified in the assessment, either on the care plan of the cared-for person if they and the carer consent, or separately on the carer's assessment form.
- record the carer's role and the level and type of care provided so that changes in the carer's situation and needs are identified when the care/support plan is reviewed.
- record any decisions about sharing of information and consents given or refused.
- record the resources or other services provided, including care provided by the carer, and any needs that are not met by these.

- collate aggregated information from individual assessments on unmet need, for use in planning services.

## 7. AFTER THE ASSESSMENT

### 7.1 What the 2002 Act Does

7.1.1 Section 8 of the 2002 Act amends Section 12A of the 1968 Act by adding two steps into the process of assessing and deciding on services for adults in need of community care services:

- Once a local authority has assessed the needs of a person for community care services, the authority must take into account the care already being provided by any “substantial and regular” carer before deciding what services may need to be provided.
- The authority must also take into account the views of the cared-for person and their carer, as far as this is “reasonable and practicable”.

These new steps apply to every assessment of a person in need, regardless of whether the carer has been or wishes to be assessed.

7.1.2 Section 10 of the 2002 Act introduces a similar requirement into the 1995 Act for carers of children with disabilities by inserting a new subsection (4) in Section 23 of the 1995 Act ([See Chapter 8](#)).

7.1.3 The new entitlement introduced by the 2002 Act for carers to have a separate assessment at any time ([see paragraph 6.3.1](#)) means that local authorities will need to review how carers’ assessments relate to assessments of cared-for persons. Assessment of a carer, either through a separate carers’ assessment, or as part of the assessment of the cared-for person, enables an authority to reach conclusions about the carer’s ability to care and continue caring. These conclusions will inform the authority’s decision on the services or other support to provide to the person in need, or what other resources the carer may need to help them in their caring role.

#### **local authorities should -**

- recognise that assessment of a carer, either through a separate carers’ assessment, or combined with an assessment of the cared-for person, enables them to reach conclusions about the carer’s ability to care and continue caring.
- use these conclusions in deciding what services or other support to provide to the person in need, or what other resources the carer may need to help them in their caring role.
- consider a range of options to help the cared-for person or the carer which may include:
  - new or changed services (or direct payments) provided to the **cared-for person** (which may include respite care or short breaks);
  - new or changed direct payments to the **cared-for person**;
  - direct support to the **carer** through information, advice or access to other resources.

- recognise that carers are care-providers, and support of any kind which enables a carer to continue caring should be regarded as a resource enabling the carer to care, not as a service provided to the carer.

## **7.2 Monitoring and reviewing**

7.2.1 Assessment provides an understanding of a carer's situation and needs at one particular time. It is essential that authorities recognise that caring situations and carers' capacity to care are constantly changing. Regular arrangements to monitor and review the situation and the support being provided are essential and should be an integral part of an authorities' assessment approach.

### **local authorities should -**

- recognise that assessment is an on-going process and that regular reviews are essential.

## **7.3 Cared-for Person unwilling to accept Assessment or Services**

7.3.1 If the cared-for person has not been, and does not wish to be, assessed and their carer is assessed separately, statutory agencies will need to consider the options available to support the carer. In law, the results of a separate carers' assessment are used to influence decisions about services provided to the person in need. The assessment of the carer may establish that they need support or other resources to enable them to continue caring, but the cared-for person may not wish to receive these services.

### **local authorities should -**

- consider the options available to support the carer if a carer is assessed separately but the cared-for person has not been and does not wish to be assessed.
- consider trying to persuade the cared-for person to accept either direct or indirect help, but recognise that cared for persons cannot be forced to accept services.
- suggest direct payments as an option to the cared-for person in these circumstances where they would give the cared-for person more control over alternative care arrangements.
- try to support the carer in other ways if a cared-for person remains unwilling to accept any services or other help.
- consider using their general power under Section 12 of the 1968 Act to provide advice, guidance and assistance to the carer.
- ensure they inform carers of services and other support available from the voluntary sector.

## 7.4 Taking account of the Carer's contribution

7.4.1 This new requirement ensures that before deciding what services or other support to provide to a person in need, an authority must consider the care that the carer is currently providing for that person. It gives practical effect to the role of carers as full partners in care-giving. This change should not be interpreted as requiring authorities only to provide care which is not currently being provided by the carer, or to assume that the carer's contribution will continue. The intention is to ensure that the authority recognises the contribution the carer is willing and able to make, and provides other services which complement the carer's contribution.

### local authorities should -

- be aware that they must consider the care that the carer is currently providing before deciding what services or other support to provide to the person in need.
- recognise the caring responsibility the carer is willing and able to take.
- construct a package of care, in discussion with the cared-for person, the carer and other statutory agencies, in which other services complement the carer's contribution and the level of care that the cared-for person wants the carer to provide.
- not assume that the carer's contribution will continue at any set level.
- be aware that they remain responsible for ensuring the needs of the cared-for person as a whole are met.

## 7.5 Taking account of the Cared-for Person and Carer's views

7.5.1 Statutory agencies are now required to take account of the views of the cared-for person and the carer before deciding what services to provide. The intention is to ensure that the care package meets the wishes and needs of both the cared-for person, and their carer as far as possible. Authorities should particularly ensure that the carer can express views about the type and amount of caring contribution they are willing to make, and what other support could complement their caring.

### local authorities should -

- seek and take account of the views of both the cared-for person and the carer before deciding what support to provide to a person in need.
- include the parent or other carer in the case of a carer for a child with disabilities.
- ensure that the care package meets the wishes and needs of both the cared-for person, and their carer as far as possible and appropriate.
- ensure that the carer can express views about the type and amount of caring contribution they are willing to make, and how other support could complement their caring.

## 7.6 “Reasonable and Practicable”

7.6.1 Local authorities are required to take account of the cared-for person’s and the carer’s views (see paragraph 7.1.1) “as far as it is reasonable and practicable”.

### local authorities should -

- recognise that it should be normal practice to take account of the cared-for person’s and the carer’s views.
- recognise there should only be a very small proportion of cases where these views are not taken into account.
- be aware that there may be situations where it is not reasonable or practicable to take account of the carer’s views at the time of deciding on services, for example:
  - where the views of the carer or cared-for person are difficult to obtain, because of their physical location or their medical condition;
  - where consulting and involving the carer could delay the provision of urgently needed services;
  - where the authority concludes after careful consideration that the views expressed are not in the best interests of the cared-for person or carer.
- ensure that the requirement to take account of the cared-for person’s and carer’s views is properly considered in every case, and that the reason for any decision not to do so is fully recorded.
- ensure that where the cared-for person or carer has not been consulted in advance because of urgency or distance, they are consulted as early as possible afterwards, and make any adjustments to care arrangements that may be necessary as a result.

## 7.7 Services & Charges

7.7.1 A cared-for person who is a person “in need” under terms of the 1968 Act may receive community care services following a community care assessment. A carer may also be eligible for a community care assessment if they are “in need” and may receive community care services where a **community care assessment** shows these are necessary.

7.7.2 A carer is also entitled to a **carer’s assessment** and, where the carer’s assessment identifies a need for this, support in the caring role. This support may be in the form of community care services provided to the cared-for person, or other resources provided directly to the carer. There is no statutory provision for carers to receive services directly as a result of a carer’s assessment.

7.7.3 It is important that local authorities are aware of the distinction between the two types of assessment and their consequences. The distinction is also relevant to any charges local authorities may levy on cared-for persons for services provided to them.

**local authorities should -**

- be clear about the distinction between a community care assessment and a carer's assessment.
- be aware that community care services can only be provided following a community care assessment.
- be aware that a carer's assessment cannot lead to the provision of community care services to the carer, but may influence the community care services provided to the cared-for person.
- recognise that they cannot levy charges on carers for support or resources provided to sustain their caring role as a result of a carer's assessment.
- apply existing rules and discretion about charging and assessment of income to ensure as far as possible that charges levied on the cared-for person do not adversely affect carers.
- provide information, training, advocacy, translation, interpreting and other support to carers free of charge, without the need for a formal assessment.

## CARERS OF CHILDREN WITH DISABILITIES

### 8.1 What the 2002 Act does

8.1.1 Section 11 of the 2002 Act amends Section 24 of the 1995 Act. This section now gives a “substantial and regular” carer of a child with disabilities, irrespective of the carer’s age, the right to request at any time an assessment of their ability to care, regardless of whether the child is being assessed.

8.1.2 Section 10 of the 2002 Act amends Section 23 of the 1995 Act by adding two steps into the process of assessing and deciding on services for a child affected by disability (either their own or that of another person in their family). Once a local authority has assessed the needs of such a child for children’s services, and before deciding what services should be provided, the authority must take into account the care already being provided by any “substantial and regular” carer. The authority must also take into account the views of the child and their parent or guardian, as far as this is “reasonable and practicable”. These new steps apply to every assessment of a child affected by disability, regardless of whether the carer has been or wishes to be assessed.

8.1.3 Section 11 of the 2002 Act creates a new Section 24A in the 1995 Act, requiring local authorities to notify carers of children with disabilities that they may be entitled to an assessment. This duty applies to any carer who appears to the local authority to be providing or intending to provide a substantial amount of care on a regular basis to a child with disabilities who is eligible for children’s services under the 1995 Act.

### 8.2 Policy context

8.2.1 The 2002 Act introduces similar changes to the 1995 Act for carers of children with disabilities to those made to the 1968 Act for carers of disabled adults. In implementing the new duties and rights for carers of children with disabilities, local authorities should follow the general approach recommended in this guidance around assessments for carers of adults (Chapter 6) and, if appropriate, the guidance on supporting young carers (Chapter 9). Local authorities should treat carers of children with disabilities as partners in providing care in the same way as they treat carers of adults.

#### **local authorities should -**

- be aware that the law now gives a carer of a child with disabilities the right to request an assessment of their ability to care at any time.
- be aware that this right exists -
  - irrespective of the carer’s age
  - regardless of whether the child is being assessed
  - so long as the carer is caring on a “substantial and regular” basis
- be aware that there are now two more steps in the process of assessing and deciding on services for a child affected by either their own disability, or that of another person in their family.

- ensure that once they have assessed the needs of such a child for children's services they must take into account -
  - the care already being provided by any “substantial and regular” carer before deciding what services should be provided
  - the views of the child and their parent or guardian, as far as this is “reasonable and practicable”.
- be aware that these new steps apply to every assessment of a child affected by disability, regardless of whether the carer has been or wishes to be assessed.
- notify carers of children with disabilities that they may be entitled to an assessment.

### 8.3 Carers who are also parents or guardians

8.3.1 Most carers of a child with disabilities (though not all) are the child’s parent or guardian. Parents and guardians of children have specific legal obligations and responsibilities towards children in their care, including the requirement in Part 1 of the 1995 Act to safeguard and promote the child's health, development and welfare.

#### **local authorities should -**

- take account of the legal obligations arising from the role of parent or guardian when assessing the ability or capacity of a carer who is also a parent or guardian to continue to provide care.
- consider, when undertaking an assessment, how parent carers are coping, and what support or other resources they may need to ensure they can sustain their role.
- take a holistic view of the whole family situation, including parent carers’ responsibility to meet the needs of other children in the family.

### 8.4 Links with Other Assessments

8.4.1 Section 8 of the Disabled Persons (Services, Consultation and Representation) 1986 (“the 1986 Act”) places a duty on local authorities when assessing what services to provide to a person (adult or child) with disabilities living at home, to take into account the ability of a carer providing “a substantial amount of care on a regular basis” to continue providing that care. This obligation does not apply where the local authority is assessing a carer under the 1968 Act or the 1995 Act, as amended by the new provisions in the 2002 Act. However, as mentioned in [paragraph 4.2.3 above](#), the obligation under the 1986 Act continues to apply to assessment for services other than community care and children’s services, including services provided under National Assistance and Mental Health legislation. Local authorities should therefore still have regard to their obligations under Section 8 of the 1986 Act.

## 8.5 Multiple Assessments

### local authorities should -

- be aware that carers of children with disabilities may be offered multiple assessments by different agencies, often covering similar issues.
- aim always to combine and streamline multiple assessment processes and follow the principle of Single Shared Assessment.
- ensure that any assessment of a carer of children with disabilities involves as wide a range of professionals as is required to give a holistic view of the needs of the child, the carer and other family members.
- minimise duplication between assessments, and to share relevant information between different processes as far as possible, with the consent of the child and their parents or guardians.

## 8.6 Impact of child with disabilities on siblings

**8.6.1** Brothers and sisters of children with disabilities are regarded as “children affected by disability” and as such can be supported as “children in need” under Section 22 of the 1995 Act. Siblings of children with disabilities frequently cannot enjoy the same social opportunities as other children. In addition, they often provide care for their sibling beyond what may normally be expected in sibling relationships. Where this care is concluded to be “substantial and regular” they may be eligible for an assessment as “young carers”.

### local authorities should -

- be aware that brothers and sisters of children with disabilities are regarded as “children affected by disability” and as such can be “children in need”.
- be aware that where siblings provide care for a child with disabilities and this care is concluded to be “substantial and regular”, they may be eligible for an assessment as “young carers”.
- be aware that parents have responsibilities towards all of their children, whether or not they have a disability.
- consider the needs of other children in the family when assessing the ability and capacity of parent carers to provide care for their child(ren) with disabilities.

## 8.7 Role of schools in the assessment process

8.7.1 An assessment of a carer of a child with disabilities should reflect the child’s attendance at school, and the school’s arrangements and expectations. Assessors should not assume that a child’s attendance at school necessarily provides respite for their carer.

**local authorities should -**

- not assume that a child's attendance at school necessarily provides respite for their carer.
- be aware that carers of children with disabilities are often expected to be “on call” in case of difficulties when the child is in school.
- be aware that some carers may need to attend the school regularly where the child has significant health care needs or behavioural difficulties.
- take into account in the assessment that a carer may have particular difficulties during the school holidays.

## **8.8 Changing Needs as Child develops**

8.8.1 As children develop, their care needs can change regularly. This can also affect the role and needs of their carer. Authorities should ensure they carry out regular reviews or re-assessment of the child and their carer.

**local authorities should -**

- anticipate the need for equipment and adaptations to the home as a child with disabilities grows older, to minimise any adverse affects of the caring role on the health of the carer.
- have systems to check with families on a regular basis when reviews of a child's needs are to take place.
- carry out regular reviews and re-assessments of the child and carer.
- plan and make early arrangements for the child's eventual transition from children's to adult services in line with the recommendations set out in *The Same as You* and existing arrangements for the transitional needs of children affected by disability.
- ensure young people and their parents and carers have access to high quality guidance and support to enable them to make the transition from school to post-school education and training.

## **8.9 Charging**

8.9.1 Where the carer is the child's parent or guardian, they have a legal responsibility for the welfare of their children, and this implies financial responsibility for their children too. However, if supporting the child's disability imposes significant additional costs on the parents, authorities should consider carefully whether to levy charges for support services.

**local authorities should -**

- consider carefully whether to levy charges for services for children with disabilities if supporting the disability of a child imposes significant additional costs on the parents or guardians.

## **8.10 Outcomes**

**local authorities should -**

- be aware that there is a range of options for assisting a carer of a child with disabilities, including:
  - new or changed services to the **child** or their **siblings**, as children affected by disability (which may include respite breaks);
  - direct support to the **carer** through information, advice or access to other resources;
  - direct payments to the **carer** to purchase children's services for the disabled child if the carer is the parent or guardian (from June 2003).

## 9. YOUNG CARERS

### 9.1 What the 2002 Act does

9.1.1 Section 9 of the 2002 Act creates a new Section 12AA in the 1968 Act. This new section gives a “substantial and regular” carer of an adult eligible for community care services the right to request an assessment of their ability to care at any point, *whether or not the carer is a child*.

9.1.2 Section 11 of the 2002 Act amends Section 24 of the 1995 Act in a similar way. This section now gives a “substantial and regular” carer of a child with disabilities the right to request an assessment of their ability to care at any point, *whether or not the carer is a child*.

### 9.2 Assessment of ability to care

9.2.1 In addition to the general guidelines on assessment and outcomes set out in Chapters 6 and 7 of this guidance, the following principles should be adopted in assessments relating to young carers aged under 18.

#### **local authorities should -**

- be aware that young carers under the age of 16 now have an explicit and independent right to have their ability to care assessed if they are providing or intend to provide “substantial and regular” care.
- be aware that young carers under 16 may be assessed as a carer
  - under Section 12AA of the 1968 Act, if caring for an adult who is eligible for community care services;
  - under Section 24 of the 1995 Act, if caring for a child with disabilities.
- be aware that young carers may also be assessed as a “child in need” under the 1995 Act.
- be clear about the statutory route being used for the assessment.
- be aware that the choice of which route to use may be influenced by the desired outcomes

### 9.3 “Substantial and Regular”

9.3.1 When deciding whether a young carer is eligible for an assessment, authorities should interpret “substantial and regular” in ways that reflect the particular needs and development of young people, and the Executive’s policy that children should not have a level of caring responsibility that has a significant and adverse impact on their ability to participate in education, leisure and social activities.

**local authorities should -**

- In interpreting substantial and regular not automatically adopt the same approach that would be used for an adult carer.
- focus on the practical and emotional impact of the caring responsibilities on the young person's current and future development, and their access to social, leisure and educational activities.
- take account of the young person's age and the nature of the caring responsibilities.
- ensure that the cared-for person receives sufficient other support so that the young person does not undertake a caring role that is likely to have an adverse impact on their own social and educational opportunities.
- ensure that a young person does not have a greater caring role than they want.

9.3.2 In some circumstances a young person does wish to have a significant caring role that would count as "substantial" for a period, for example, to care for a terminally ill parent. Statutory agencies need to work sensitively with the young person in these cases, respecting their wishes while also aiming to minimise the impact of their caring role on their own welfare and development.

**local authorities should -**

- recognise that in some circumstances a young person may wish to maintain a "substantial" caring role for a period, for example in the care of a terminally ill parent.
- Respect the young person's views and wishes and consider whether and how to support them in their caring role for a limited period, if the agency is satisfied that the young person's welfare can be safeguarded.
- keep cases of this kind under close and regular review to ensure that adverse impact on the child's welfare is kept to a minimum.
- take great care to ensure they do not unintentionally endorse or perpetuate significant caring roles for young people.

## **9.4 Links with other Assessments**

9.4.1 There may be some young carers who do not provide "substantial and regular" care but whose development is potentially at risk as a result of their caring responsibilities. Young carers who are not "substantial and regular" but who have support needs or are at risk of inappropriate caring should be regarded as "children in need" under the 1995 Act, and assessed and supported as such.

9.4.2 Young carers may also be assessed as a child affected by disability under Section 23 of the 1995 Act if caring for another child/young person. This would be done as part of an assessment of the child with disabilities, or child affected by disability. Such an assessment needs to be requested by a parent or guardian.

**local authorities should -**

- be aware that there may be some young carers who do not provide “substantial and regular” care, but whose development is potentially at risk as a result of their caring responsibilities.
- treat young carers as children “in need” if their caring role is not “substantial and regular”, but they have support needs or are at risk of inappropriate caring.
- be aware that a child is regarded as “in need” if -
  - they are unlikely to achieve or maintain a reasonable standard of health or development without support from the statutory or voluntary agencies;
  - their development is likely to be significantly impaired without support services;
  - they are disabled;
  - they have special needs; or
  - they have mental health difficulties.
- assess and support all “children in need”.
- be aware that young carers may also be assessed as a child affected by disability under Section 23 of the 1995 Act if caring for another child/young person, and an assessment has been requested by their parent or guardian.

## **9.5 Purpose of Assessment**

9.5.1 The primary objective of a young carer’s assessment is to safeguard the interests and promote the welfare of the young carer, and to ensure that they are not taking on inappropriate levels or types of caring by ensuring the family has access to alternative support.

**local authorities should -**

- focus on safeguarding the interests and promoting the welfare of the young carer, and ensure that they are not taking on inappropriate levels or types of caring.
- ensure the family has access to alternative forms of support.
- establish what level of care a young carer who wishes to maintain a caring role can take on without adverse impact on their current or future physical and psychological development or life chances.
- recognise that frequently young carers provide more emotional support than physical support, and consider fully the impact of this in deciding what may be appropriate levels or types of care.

## 9.6 Parents of Young Carers

9.6.1 Where a young carer is caring for an ill or disabled parent, the assessment and support for the young carer should focus on supporting the parent to live independently so that their capacity to act as a parent is supported, not undermined.

### **local authorities should -**

- focus on enabling ill or disabled parents, or other adults with parental responsibility, to live independently, and supporting their own parenting role.
- ensure that the child's own developmental needs are being adequately met.
- aim to remove inappropriate responsibilities from the child.

## 9.7 Family focused assessment

9.7.1 The interests of the young person must be at the centre of any young carer's assessment, but the assessment process should consider the whole family situation, and aim as far as possible to provide support to the whole family.

### **local authorities should -**

- consider the whole family situation.
- work directly with other family members, and explain the assessment process and the expected outcomes.
- be aware that families and parents may:
  - have fears about the involvement of social work or other professional staff;
  - perceive that involvement as a sign of failure on their part;
  - have fears that one or more of their children may need to be looked after;
  - be openly hostile to the involvement of the statutory agencies;
- try to work with the family, though where this proves impossible, remember that the interests of the child must remain paramount.

## 9.8 Young Carer not wanting to be assessed

9.8.1 If a young carer does not want to be assessed but appears to have a substantial caring role, authorities should aim to get as full a picture of their situation as possible, and consider what other alternative support could be offered to the family.

### **local authorities should -**

- consider the whole family situation .
- try to get a clearer picture of the young carer's role.
- consider alternative support to the family.

## 9.9 Cared-for Person refuses an Assessment

### **local authorities should -**

- consider whether there is a need to support a young carer who is providing “substantial and regular” care when the young carer or their parent or guardian does not wish to have an assessment.
- keep the protection of the child paramount.
- consider providing community care services for the cared-for person, or children’s services to the child.
- ensure that the young carer is enabled to express their views fully about their caring role and their own needs.
- be aware that the caring relationship may be abusive in nature, and if necessary take appropriate protective action to address this.

## 9.10 Who can assess?

9.10.1 Local authorities have power under Section 21 of the 1995 Act to request help in exercising their functions under the Act from specified bodies or people. These other bodies or people are specified in Section 21(2) of the 1995 Act, and include other local authorities, NHS Boards or Trusts. Authorities may use this power formally to involve specified bodies in assessments carried out under the 1995 Act.

### **local authorities should -**

- ensure that staff involved in assessing a young carer have expertise in dealing with children, and can gain their trust.
- be prepared to involve staff from a voluntary sector carers’ centre or Young Carers’ Project, from children’s services, the education service, or school, who may be best placed to secure the young carer’s trust.
- be ready to involve staff from adult services as well, in order to address the needs of the family as a whole.
- follow the general principles of Single Shared Assessment, to minimise the burden on the young person and the family, and share information as fully as possible between different staff, in accordance with existing information-sharing protocols.
- have clear formal underpinning arrangements to involve other parties or bodies in aspects of the assessment process.
- have binding agreements with those other bodies to allow authorities to be certain that assessments will meet standards set by the authority, and that staff involved in assessments have the appropriate levels of qualification, training and expertise.

## 9.11 Multi-Agency Assessment

9.11.1 Because of the wide range of factors relevant to young carer's needs, their educational development, and the differing needs of the person being cared for, a number of agencies and bodies are likely to have a role to play in many young carers' assessments, and effective joint-working between these different agencies and bodies is vital.

### **local authorities should -**

- ensure close joint working with other bodies to enable a full understanding of the young carer's situation, involving:
  - local authority children's services
  - local authority community care services
  - local authority education services
  - the NHS
  - voluntary sector bodies
  - schools
  - health or youth workers.
- ensure assessment tools are suitable for children and young people and include opportunities for self-assessment.
- establishing agreed protocols for working between bodies, and review them regularly.

## 9.12 Who should be at the Assessment?

### **local authorities should -**

- offer young carers the option of having a friend or other supporter present at the assessment, and ensure confidentiality issues are addressed where this happens.
- recognise that young carers may want to be supported by relatives, teachers or support workers with whom they have built up a relationship of trust.
- ensure ready access to child advocacy support in such assessments

## 9.13 Tension between the Young Carer and Parents or Guardian

9.13.1 There may be situations where there are different views between a young carer and other members of their family. These tensions can be difficult to recognise and respond to.

**local authorities should -**

- recognise there may be differences of views between young carers, their siblings and their parents which have not been expressed.
- be alert to the possibility that children's perceptions may be strongly influenced by their parents or other family members, and they may not value their own views.
- be aware that young people may fear that admitting difficulties may lead to a break-up of the family.
- ensure staff with understanding of the issues and professional skills are available in order to try to resolve such tensions.
- recognise that staff from voluntary sector support projects and other services which are trusted by the young carer may be well placed to resolve these tensions.
- have access to mediation or advocacy to help in such circumstances.

## **9.14 Confidentiality**

9.14.1 The issues of confidentiality of information involved in the assessment process of a young carer are potentially complex. In general, personal data can only be disclosed to others with the consent of the person it relates to. However, in some circumstances there may be a strong need to disclose that information to others (eg, for child protection, or as part of a joint assessment), and authorities must ensure they have arrangements for securing the necessary consents before doing this.

**local authorities should -**

- treat information provided by young carers during the assessment process as confidential.
- be aware that personal data is protected by the Data Protection Act 1998 and can only be disclosed to others in line with the principles of that Act.
- recognise that personal data can generally only be disclosed with the consent of the person it relates to, but in some circumstances information from a young carer might require to be disclosed to others (e.g., for child protection or to enable joint assessment).
- seek consent for sharing of information from the young carer as part of the assessment process, or from the young carer's parent or guardian if the child is not considered to have the legal capacity to give informed consent.

## **9.15 Outcomes**

9.15.1 The assessment process aims to identify the nature of a young carers' caring role, and the ways this can be minimised by alternative support to the family and/or the young carer. Possible outcomes will include:

- new or changed services for the **cared-for person**, which may include respite care or short breaks;
- direct support to the **young carer** through children's services under the 1995 Act;
- direct support to the **young carer** through information and advice;
- referral of the young carer to support services provided by statutory or voluntary agencies.

## 9.16 Taking account of the carer's contribution & views

9.16.1 The 2002 Act requires local authorities to take account of the care provided by a carer, and the views of the carer and cared-for person, before deciding on services to provide to the cared-for person. Paragraphs [7.4 to 7.6](#) explain these provisions in relation to adult carers. While these new requirements also apply to young carers, local authorities should take a different approach in applying them to carers under 18.

9.16.2 The requirements in the 2002 Act are intended to give practical effect to the role of adult carers as full partners in care-giving, to ensure that local authorities provide care packages that complement the care an adult carer is able and willing to provide. However, this is not an appropriate approach with young carers, where authorities should be aiming to minimise the impact of their caring role on the young carer's life, and to provide alternative support to the family that minimises the need for the young person to act as a carer.

### **local authorities should -**

- ensure that they take account of the care provided by a young carer, and the views of the carer and cared-for person, before deciding on services for the cared-for person.
- recognise that supporting young carers in their caring role may inadvertently perpetuate inappropriate levels of caring by a child or young person.
- aim to minimise the impact of their caring role on the young carer's life.
- provide alternative support to the family that reduces the need for the young person to act as a carer.
- recognise that in some situations young carers *want* to continue to care, and work sensitively to support them while aiming to minimise the impact of their caring on them.

## **10. NHS CARER INFORMATION STRATEGIES**

### **10.1 What the 2002 Act does**

10.1.1 Section 12 of the 2002 Act gives Scottish Ministers a new power to require NHS Boards to prepare and submit to them a “carer information strategy”, setting out how the Board will inform carers who appear to them to be “substantial and regular” of their potential right to assessment under Section 12AA of the 1968 Act or Section 24 of the 1995 Act. Scottish Ministers may specify the date for submitting the strategy, the form and extent of the strategy, and the consultation that the Board must undertake in preparing it. NHS Boards must provide a copy of their carer information strategy to any person who requests it.

### **10.2 Purpose of Carer Information Strategies**

10.2.1 Staff and professionals working in the NHS have an important role to play in identifying carers, offering them information, and referring them on to sources of advice and support. The Executive’s Health White Paper “Partnership for Care” (2003) emphasises the need for the NHS to work in partnership with carers. Many carers present themselves in a health care setting before they make contact with local authority social work departments, particularly carers who are about to or have just begun to take on caring responsibilities. In line with the Joint Future agenda, NHS Boards and local authorities should develop joint approaches, in partnership with local carers, for providing general information to carers. This approach is likely to be the most resource effective way and ensure targeted and consistent information.

10.2.2 All carers need to know that advice, training, information and practical support are available, and how to access that support. The purpose of NHS Carer Information Strategies will be to ensure that carers that NHS staff have contact with, including young carers, who appear to them to be “substantial and regular” are made aware of their potential right to an independent assessment of their ability to care, and offered information and support directly where appropriate.

### **10.3 Implementation of Carer Information Strategies**

10.3.1 Some Health Boards are already developing Strategies with local authorities and carers. The introduction of Carer Information Strategies throughout Scotland is a priority for the Executive, and separate guidance will be issued later. In the meantime, the Executive is happy to support local discussions and developments.

## 11. MONITORING IMPLEMENTATION

### 11.1 Measuring success

11.1.1 It is essential that local authorities, other statutory agencies, voluntary sector bodies and the Executive can monitor that the new provisions are being implemented effectively and are producing successful outcomes for carers. Monitoring arrangements must be robust and meaningful, and should link with other existing monitoring as far as possible to ensure consistency and minimise the burden.

11.1.2 Local authorities should make arrangements to monitor the following indicators of successful implementation of the provisions for carers. Some of these indicators may not be available immediately and may need further development. The Executive expects local authorities to work in partnership with other statutory agencies and carers to develop means of monitoring these indicators. The following table lists the indicators that authorities should develop, and how we expect these to link with existing monitoring arrangements.

Indicator	Method of monitoring
1. Number of carers requesting, offered and receiving assessment (split by gender, age, ethnic background)	<ul style="list-style-type: none"> <li>• Joint Performance Information and Assessment Framework (JPIAF)</li> <li>• SE community care statistical returns</li> </ul>
2. Time intervals between request or referral for assessment, assessment, and provision of support	As for Indicator 1
3. Aggregated record of need identified from carers' assessments	for local development
4. Aggregated record of unmet need following carers' assessments	for local development
5. Carers' satisfaction with assessment process and support provided	<ul style="list-style-type: none"> <li>• JPIAF – survey of user/carer satisfaction (under development)</li> <li>• Local surveys</li> </ul>
6. Total amount of <b>respite care</b> provided (days) to service users with a carer (split between residential and community based)	Audit Scotland performance indicators
7. Number of service users with a carer receiving respite care	Audit Scotland performance indicators (contextual info)

11.1.3 As well as monitoring activity and volumes, the Executive expects statutory agencies to develop means of monitoring the outcomes of support for carers through surveys and other qualitative approaches. The Executive has started work with local authorities and carers to develop ways of measuring and monitoring outcomes in this area, and we will continue this work to improve the range of indicators of successful implementation.

11.1.4 Local authorities and other statutory agencies are already required to carry out ethnic monitoring of all their services for carers and service users to monitor the impact of their policies on the promotion of race equality. This monitoring is required to comply with their legal obligations under the Race Relations (Amendment) Act 2000.

11.1.5 The Scottish Executive intends to monitor how effectively local authorities are implementing the new legislation. The Executive plans to discuss with local authorities how to draw together the information from their own monitoring of a selection of these indicators to produce an overview of outcomes and success in implementation across Scotland. More details on these proposals will follow as they develop.

*NOTE: the amended versions of sections of the 1968 & 1995 Act contained in this Annex are offered simply as an illustration of the effect of the 2002 Act. They cannot be relied on as a definitive statement of the law.*

**SECTIONS 12A, 12AA & 12AB OF SOCIAL WORK (SCOTLAND) ACT 1968  
(as amended by Community Care and Health (Scotland) Act 2002)**

**Duty of local authority to assess needs.**

12A- (1) Subject to the provisions of this section, where it appears to a local authority that any person for whom they are under a duty or have a power to provide, or to secure the provision of, community care services may be in need of any such services, the authority-

(a) shall make an assessment of the needs of that person for those services; and

~~(b) having regard to the results of that assessment, shall then decide whether the needs of that person call for the provision of any such services.~~

(b) shall then decide, having regard to the results of that assessment, and taking account—

(i) where it appears to them that a person (“the carer”) provides a substantial amount of care on a regular basis for that person, of such care as is being so provided; and

(ii) in so far as it is reasonable and practicable to do so, both of the views of the person whose needs are being assessed and of the views of the carer (provided that, in either case, there is a wish, or as the case may be a capacity, to express a view),

whether the needs of the person being assessed call for the provision of any such services.[Section [8.B]]

(2) Before deciding, under subsection (1)(b) of this section, that the needs of any person call for the provision of nursing care, a local authority shall consult a medical practitioner.

(3) If, while they are carrying out their duty under subsection (1) of this section, it appears to a local authority that there may be a need for the provision to any person to whom that subsection applies-

(a) of any services under the National Health Service (Scotland) Act 1978 by the Health Board-

(i) in whose area he is ordinarily resident; or

(ii) in whose area the services to be supplied by the local authority are, or are likely, to be provided; or

(b) of any services which fall within the functions of a housing authority (within the meaning of section 130 (housing) of the Local Government (Scotland) Act 1973) which is not the local authority carrying out the assessment,

the local authority shall so notify that Health Board or housing authority, and shall request information from them as to what services are likely to be made available to that person by

that Health Board or housing authority; and, thereafter, in carrying out their said duty, the local authority shall take into account any information received by them in response to that request.

~~(3A) Subject to subsection (3B) below, in any case where-~~

~~(a) a local authority make an assessment of the needs of any person ("the relevant person") under subsection (1)(a) above, and~~

~~(b) a person ("the carer") provides or intends to provide a substantial amount of care on a regular basis for the relevant person,~~

~~the carer may request the local authority, before they make their decision under subsection (1)(b) above, to make an assessment of his ability to provide and to continue to provide care for the relevant person; and if he makes such a request, the local authority shall make such an assessment and shall have regard to the results of that assessment in making that decision.~~

~~(3B) No request may be made under subsection (3A) above by a person who provides or will provide the care in question-~~

~~(a) by virtue of a contract of employment or other contract; or~~

~~(b) as a volunteer for a voluntary organisation.~~

~~(3C) Section 8 of the Disabled Persons (Services, Consultation and Representation) Act 1986 (duty of local authority to take into account ability of carers) shall not apply in any case where an assessment is made under subsection (3A) above in respect of a person who provides the care in question for a disabled person. [Section 8(1)]~~

(4) Where a local authority are making an assessment under this section and it appears to them that the person concerned is a disabled person, they shall-

(a) proceed to make such a decision as to the services he requires as is mentioned in section 4 of the Disabled Persons (Services Consultation and Representation) Act 1986 without his requesting them to do so under that section; and

(b) inform him that they will be doing so and of his rights under that Act.

(5) Nothing in this section shall prevent a local authority from providing or arranging for the provision of community care services for any person without carrying out a prior assessment of his needs in accordance with the preceding provisions of this section if, in the opinion of the authority, the condition of that person is such that he requires those services as a matter of urgency.

(6) If, by virtue of subsection (5) of this section, community care services have been provided for any person as a matter of urgency, then, as soon as practicable thereafter, an assessment of his needs shall be made in accordance with the preceding provisions of this section.

(7) This section is without prejudice to section 3 of the said Act of 1986.

(8) In this section-

"community care services" has the same meaning as in section 5A of this Act;

"disabled person" has the same meaning as in the said Act of 1986; and

"medical practitioner" means a fully registered person within the meaning of section 55 (interpretation) of the Medical Act 1983.

"person" means a natural person.

### **Assessment of ability to provide care**

12AA. -(1) A person ("the carer") who provides, or intends to provide, a substantial amount of care on a regular basis for another person aged eighteen or over ("the person cared for") may, whether or not the carer is a child,[8.I.6.39] request a local authority to make an assessment ("the carer's assessment") of the carer's ability to provide or to continue to provide such care for that person.

(2) The local authority to whom the request is made shall—

(a) comply with the request, where it appears to them that the person cared for is a person for whom they must or may provide, or secure the provision of, community care services; and

(b) if they then or subsequently make an assessment under subsection (1)(a) of section 12A of this Act of the needs of the person cared for, have regard to the results of the carer's assessment—

(i) in the assessment of the person cared for; and

(ii) in making their decision under subsection (1)(b) of that section as respects that person.

(3) Subsection (1) above does not apply as respects a carer who provides, or will provide, the care in question—

(a) by virtue of a contract of employment or other contract; or

(b) as a volunteer for a voluntary organisation.

(4) Section 8 of the Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33) (duty of local authority to take into account abilities of carer in deciding whether to provide certain services to disabled person) shall not apply in a case where a local authority make an assessment, by virtue of subsection (2)(a) above, in respect of a carer of a disabled person.

(5) Subsections (4) to (7) of section 12A of this Act apply to a local authority making an assessment by virtue of subsection (2)(a) of this section as they apply to a local authority making an assessment under subsection (1)(a) of that section.

(6) In this section, "community care services", "disabled person" and "person" have the same meanings as in section 12A of this Act. [section 8(2)]

### **Duty of local authorities to provide information to carer**

**12AB** (1) Where it appears to a local authority both that—

(a) a person aged eighteen or over ("the person cared for") is a person for whom the authority are under a duty or have a power to provide community care services; and

(b) another person ("the carer") provides, or intends to provide, a substantial amount of care on a regular basis for the person cared for,

the local authority shall notify the carer that he may be entitled under section 12AA of this Act to request an assessment of his ability to provide, or continue to provide, care for the person cared for.

(2) In this section, “community care services” and “person” have the same meanings as in section 12A of this Act. [Section [8.I.7.24]]

**SECTIONS 23 & 24 OF CHILDREN (SCOTLAND) ACT 1995  
(as amended by Community Care and Health (Scotland) Act 2002)**

**Promotion of welfare of children in need.**

**22.**—(1) A local authority shall—

- (a) safeguard and promote the welfare of children in their area who are in need; and
- (b) so far as is consistent with that duty, promote the upbringing of such children by their families, by providing a range and level of services appropriate to the children's needs.

(2) In providing services under subsection (1) above, a local authority shall have regard so far as practicable to each child's religious persuasion, racial origin and cultural and linguistic background.

(3) Without prejudice to the generality of subsection (1) above—

- (a) a service may be provided under that subsection—
  - (i) for a particular child;
  - (ii) if provided with a view to safeguarding or promoting his welfare, for his family; or
  - (iii) if provided with such a view, for any other member of his family; and
- (b) the services mentioned in that subsection may include giving assistance in kind or, in exceptional circumstances, in cash.

(4) Assistance such as is mentioned in subsection (3)(b) above may be given unconditionally or subject to conditions as to the repayment, in whole or in part, of it or of its value; but before giving it, or imposing such conditions, the local authority shall have regard to the means of the child concerned and of his parents and no condition shall require repayment by a person at any time when in receipt of—

- (a) income support or working families' tax credit [Words substituted (5.10.1999) by 1999 c. 10, ss. 1(2), 20, Sch. 1 paras. 1, 6(j)] payable under the [1992 c. 4.] Social Security Contributions and Benefits Act 1992; or
- (b) an income-based jobseeker's allowance payable under the [1995 c. 18.] Jobseekers Act 1995.

**Children affected by disability.**

**23.**—(1) Without prejudice to the generality of subsection (1) of section 22 of this Act, services provided by a local authority under that subsection shall be designed—

- (a) to minimise the effect on any—
  - (i) disabled child who is within the authority's area, of his disability; and
  - (ii) child who is within that area and is affected adversely by the disability of any other person in his family, of that other person's disability; and
- (b) to give those children the opportunity to lead lives which are as normal as possible.

(2) For the purposes of this Chapter of this Part a person is disabled if he is chronically sick or disabled or suffers from mental disorder (within the meaning of the [1984 c. 36.] Mental Health (Scotland) Act 1984).

(3) Where requested to do so by a child's parent or guardian a local authority shall, for the purpose of facilitating the discharge of such duties as the authority may have under section 22(1) of this Act (whether or not by virtue of subsection (1) above) as respects the child,

carry out an assessment of the child, or of any other person in the child's family, to determine the needs of the child in so far as attributable to his disability or to that of the other person.

(4) In determining the needs of a child under subsection (3) above, the local authority shall take account—

(a) where it appears to them that a person (“the carer”) provides a substantial amount of care on a regular basis for the child, or for another person in the child’s family who is being assessed under that subsection, of such care as is being so provided; and

(b) in so far as it is reasonable and practicable to do so, of—

(i) the views of the parent or guardian of the child, and the child; and

(ii) the views of the carer,

provided that, in either case, there is a wish, or as the case may be, a capacity, to express a view.”.

### **Assessment of ability of carers to provide care for disabled children.**

~~24 (1) Subject to subsection (2) below, in any case where~~

~~(a) a local authority carry out under section 23(3) of this Act an assessment to determine the needs of a disabled child, and~~

~~(b) a person (in this section referred to as the "carer" ) provides or intends to provide a substantial amount of care on a regular basis for that child,~~

~~the carer may request the local authority, before they make a decision as to the discharge of any duty they may have under section 2(1) of the [1970 c. 44.] Chronically Sick and Disabled Persons Act 1970 or under section 22(1) of this Act as respects the child, to carry out an assessment of the carer's ability to continue to provide, or as the case may be to provide, care for that child; and if the carer makes such a request, the local authority shall carry out such an assessment and shall have regard to the results of it in making any such decision.~~

(1) Subject to subsection (2) below, a person (“the carer”) who provides, or intends to provide, a substantial amount of care on a regular basis for a disabled child may, whether or not the carer is a child,<sup>[9.I.7.33]</sup> request a local authority to make an assessment (“the carer’s assessment”) of the carer’s ability to provide or to continue to provide such care for the child.

(1A) The local authority to whom the request is made shall—

(a) comply with the request, where it appears to them that the child, or another person in the child’s family, is a person for whom they must or may provide services under section 22(1) of this Act; and

(b) if they then or subsequently make an assessment under section 23(3) of this Act to determine the needs of the child, have regard to the results of the carer’s assessment—

(i) in the assessment of the child; and

(ii) in making a decision as to the discharge by them of any duty they may have as respects the child under section 2(1) of the Chronically Sick and Disabled Persons Act 1970 (c.44) or under section 22(1) of this Act.

(2) No request may be made under subsection (1) above by a person who provides or will provide the care in question—

- (a) under or by virtue of a contract of employment or other contract; or
- (b) as a volunteer for a voluntary organisation.

(3) Where an assessment of a carer's ability to continue to provide, or as the case may be to provide, care for a child is carried out under subsection (1) above, there shall, as respects the child, be no requirement under section 8 of the [1986 c. 33.] Disabled Persons (Services, Consultation and Representation) Act 1986 (carer's ability to continue to provide care to be considered in any decision as respects provision of certain services for disabled persons) to have regard to that ability.

(4) In this section "person" means a natural person.

### **Duty of local authorities to provide information to carer of disabled child**

**24A** Where it appears to a local authority both that—

- (a) a child is a disabled child for whom they must or may provide services under section 22(1) of this Act; and
- (b) a person (“the carer”) provides, or intends to provide, a substantial amount of care on a regular basis for the child,

the local authority shall notify the carer that he may be entitled under section 24(1) of this Act to request an assessment of his ability to provide, or to continue to provide, care for the child.[7]